

**ROBINS  KAPLAN** LLP

800 LASALLE AVENUE  
SUITE 2800  
MINNEAPOLIS MN 55402

612 349 8500 TEL  
612 339 4181 FAX  
ROBINSKAPLAN.COM

PATRICK M. ARENZ  
612 349 8591 TEL  
PARENZ@ROBINSKAPLAN.COM

March 12, 2021

*Via ECF*

Hon. Jesse M. Furman  
United States District Court  
Southern District of New York  
40 Centre St., Room 2202  
New York, NY 10007

Re: *Chloe v. ESquared Hospitality LLC et al.*  
Case No. 18-cv-05943-JMF-DCF

Dear Judge Furman:

We submit this joint letter at the Court's direction in docket entry 256 at 24. Each party submits its competing positions on the three topics that you requested.

**I. Chloe's Position**

**(1) Developments in the BCHG bankruptcy proceeding**

The BCHG bankruptcy proceeding is near complete. The most significant development for purposes of this proceeding relates to the By Chloe trademark. The Debtor BCHG tried to sell the By Chloe trademark to the prepetition investor group (including Bain Capital and Kitchen Fund). After substantial briefing, and an evidentiary bench trial, Judge Shannon sustained Chloe's objection and prevented the sale. Judge Shannon held that BCHG's "ownership interests in the name By Chloe was never absolute; it was always subject to the terms of the operating agreement and the NFL agreement." Ex. A at 70:11-13. Because this conclusion resolved the issue before him, Judge Shannon did not reach the question of whether Chloe terminated the NFL Agreement in March 2018. *Id.* That issue, thus, remains live for this Court. *See, e.g.,* Dkt. 150 9-12.

The bankruptcy proceeding is otherwise set to conclude shortly. The Debtor BCHG has represented that the DIP financing is about to run out. A continued hearing on a proposed sale of the assets—excluding the By Chloe trademark and other IP—is set for March 15, 2021. And the parties are in a court-ordered mediation today. That said, neither the sale nor any settlement discussions will provide any relief to ESquared Hospitality. Put differently, Chloe's claims against ESquared Hospitality will go forward no matter what happens with the bankruptcy proceeding. And ESquared Hospitality ignored Chloe's most

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recent invitation on February 10, 2021, to discuss settlement following the Court's confirmation of ESquared Hospitality's liability for \$2.3 million in attorneys' fees.

**(2) Chloe asks the Court to proceed with the pending cross-motions for summary judgment, so the case may be set for jury trial**

Chloe wants to proceed with her claims against ESquared Hospitality with all due speed. She filed this case in June 2018. The parties submitted opening summary judgment briefs in early 2020. Based on the recent developments, Chloe asks the Court to decide the pending summary judgment motions relating to Chloe's claims against ESquared Hospitality, so the Court may schedule this case for jury trial.

**(3) Chloe submits the following supplemental briefing schedule will assist the Court most efficiently resolve the pending summary judgment motions.**

The Court can resolve the pending summary judgment motions more efficiently with narrow supplemental briefing. Indeed, following the bankruptcy proceeding, some issues in the parties' cross motions have become moot. The parties should also have a chance to explain how the bankruptcy proceeding—especially as it relates to the By Chloe trademark—affects the summary judgment briefing before the Court. Chloe therefore proposes the following expedited and limited supplemental briefing schedule:

- **March 24, 2021:** Chloe supplemental brief of no more than 7 pages
- **March 31, 2021:** ESquared Hospitality supplemental brief of no more than 10 pages
- **April 7, 2021:** Chloe reply brief (if necessary) of no more than 3 pages

**II. ESquared Hospitality's and BCHG's Position**

**A. Bankruptcy Update And Position Of BC Hospitality Group (per the Company's bankruptcy counsel)**

BC Hospitality Group LLC and its affiliated debtors (collectively, the "Debtors") are seeking approval of a sale of substantially all of their assets, other than the By Chloe Mark and certain other excluded assets. A mediation regarding the sale is scheduled for March 12, 2021, and the sale hearing is scheduled for March 15, 2021. Depending on the outcome of the mediation and sale hearing, the Debtors believe that their chapter 11 cases will be dismissed or converted to chapter 7 within the next few months.

**B. Position of ESquared Hospitality**

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ESquared Hospitality does not believe summary judgment could be further litigated or decided where the bankruptcy stay with respect to BC Hospitality Group remains in effect. Because every claim asserted against ESquared Hospitality is also asserted against BC Hospitality Group, the summary judgment motions inextricably involve BC Hospitality Group.

The parties previously fully submitted their summary judgment motions notwithstanding the pendency of the arbitration. The parties thus did not believe the arbitration proceeding was germane to the legal issues in the summary judgment motions. We thus believe any supplemental briefing should be denied.

Respectfully submitted,

*/s/ Patrick M. Arenz*

Patrick M. Arenz  
Robins Kaplan LLP

*/s/ William L. Charron*

William L. Charron  
Pryor Cashman LLP

cc: All Counsel of Record (via ECF)